



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2020-0520; FRL 10016-54-OGC]

Proposed Stipulated Partial Settlement Agreement, Endangered Species Act Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulated partial settlement agreement; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's October 16, 2017, Directive Promoting Transparency and Public Participation in Consent Decrees and Settlement Agreements, notice is hereby given of a proposed stipulated partial settlement agreement in the case of *Natural Resources Defense Council v. Wheeler, et al.*, in the United States District Court for the District of Columbia (1:17-CV-02034). The Plaintiff filed its original case on October 3, 2017, alleging that EPA violated Section 7(a)(2) of the Endangered Species Act (ESA) by failing to consult on the effects to listed species of certain pesticide product registrations containing one of three pesticide active ingredients—acetamiprid (Claim One), dinotefuran (Claim Two), and imidacloprid (Claim Three). EPA and Natural Resources Defense Council (NRDC) are proposing to reach a settlement in the form of a Partial Stipulated Settlement Agreement. Defendant-Intervenor indicated that it takes no position on this proposed partial agreement. Among other provisions, the proposed partial stipulated settlement agreement between EPA and NRDC calls for EPA to complete an endangered species effects determination with respect to imidacloprid (Claim Three) by June 30, 2022. And, as appropriate, EPA will initiate consultation with the National Marine Fisheries Service and/or the Fish and Wildlife Service (Services).

DATES: Written comments on the proposed stipulated partial settlement agreement must be received by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2020-

0520 online at www.regulations.gov (EPA's preferred method). For comments submitted at www.regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA generally will not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

<http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michele Knorr, Pesticides and Toxic Substances Law Office (2333A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564-5631; email address: knorr.michele@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Stipulated Settlement Agreement

On October 3, 2017, Plaintiff (a non-governmental environmental organization) filed a complaint in the United States District Court in the District of Columbia asserting three claims against EPA for allegedly violating section 7(a)(2) of the ESA by failing to initiate and reinstate consultation with the Services. Specifically, Plaintiffs alleged that the EPA failed to consult on the effects to listed species of 95 pesticide product registrations containing one of three pesticide

active ingredients—acetamiprid (Claim One), dinotefuran (Claim Two), and imidacloprid (Claim Three). On February 8, 2018, the parties in this case entered into a stipulation of partial dismissal of any and all claims related to 36 pesticide product registrations identified in the complaint. The Court approved this stipulation of partial dismissal, leaving 59 pesticide product registrations at issue. Of the 59 product registrations remaining, 46 of them contain the active ingredient imidacloprid. Following the stipulated dismissal, EPA filed a motion to dismiss the case based on standing. After an adverse decision on the motion to dismiss, the parties had several settlement discussions. At the end of these discussions the Plaintiff and EPA reached a partial agreement in this case. Specifically, Paragraph 1 of the proposed stipulated partial settlement provides that EPA would agree to complete ESA section 7(a)(2) effects determination, compiled into a biological evaluation, for imidacloprid by June 30, 2022, and, as appropriate, request initiation of any ESA section 7(a)(2) consultation with the Services. The date for the effects determination aligns with the same deadline for two other neonicotinoid chemicals - clothianidin and thiamethoxam - that were agreed upon in a settlement in *Ellis v. Keigwin*, No. 3:13-CV-1266 (N.D. Cal). Paragraph 3 would include provisions for modifying the final biological evaluation deadlines. The stipulated partial settlement agreement would also require that within 10 business days after the Court enters any Order approving this proposed agreement that the Plaintiff, EPA, and Intervenor-Defendant to meet and confer regarding the remaining two claims in the complaint concerning certain pesticide products containing acetamiprid or dinotefuran.

Consistent with current practice, the agreement would also include statements of EPA's intent to take certain actions in addition to the deadlines associated with specific biological evaluations, including: (1) to complete a draft biological evaluation no later than one year prior to the deadline for the final biological evaluation, as well as to provide notice and a 60-day opportunity for public comment on any such draft, and (2) conduct the effects determination on a nationwide-scale.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed stipulated partial settlement from persons who are not named as parties to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulated partial settlement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the ESA or the Federal Insecticide, Fungicide, and Rodenticide Act. Unless EPA or the Department of Justice determines that consent should be withdrawn, the terms of the proposed stipulation and stipulated notice of dismissal will be affirmed.

II. Additional Information About Commenting on the Proposed Stipulation and Stipulated Notice of Dismissal.

A. How can I get a copy of the proposed stipulated partial settlement agreement?

The official public docket for this action (identified by EPA-HQ-OGC-2020-0520) contains a copy of the proposed stipulated partial settlement agreement. The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

The electronic version of the public docket for this action contains a copy of the proposed stipulated partial settlement agreement, and is available through

<https://www.regulations.gov>. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.” It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket.

EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Please refer to the information above about the current status of the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA’s electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is

EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Joseph E. Cole,
Associate General Counsel.

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